STATE OF MICHIGAN

COURT OF APPEALS

MARK A. REENDERS CONSTRUCTION, INC,

Plaintiff-Appellant,

v

CINCINNATI INSURANCE CO and SHORELINE INSURANCE AGENCY,

Defendants-Appellees.

UNPUBLISHED
January 24, 2006

No. 256592
Ottawa Circuit Court
LC No. 03-048046-CZ

Before: Zahra, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Plaintiff appeals as of right from the grant of defendants' motions for summary disposition pursuant to MCR 2.116(C)(8). We affirm.

Plaintiff, a general contractor, was covered by commercial general liability and umbrella policies issued by defendant Cincinnati procured through defendant Shoreline. Plaintiff was the general contractor of two buildings on which it perfected construction liens. When plaintiff sought to foreclose the liens, the building owners brought counterclaims against plaintiff. The counterclaims alleged breach of contract for failing to perform work in a workmanlike and timely manner. Cincinnati declined plaintiff's demand to appear and defend the counterclaims. Plaintiff then filed this declaratory action seeking a judgment that its policies afforded coverage and that defendant Cincinnati owed it a duty to defend. Additionally, plaintiff alleged defendant Shoreline breached its contract and agency relationships by failing to investigate its claims.

The standard of our de novo review applied to summary dispositions under MCR 2.116(C)(8) is succinctly set out in *Farmers Ins Exchange v Kurzmann*, 257 Mich App 412, 417; 668 NW2d 199 (2003).

> A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a complaint. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). When reviewing such a motion, a court must base its decision on the pleadings alone. *Id.* "All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). Summary disposition is appropriate under MCR 2.116(C)(8) if a party has failed to state a claim on which

> relief could be granted and further factual development would not justify recovery. *Beaudrie, supra* at 129-130.

A motion under MCR 2.116(C)(8) may be granted only where the alleged claims are clearly so unenforceable as a matter of law that no factual development could possibly justify recovery.

More specifically, we review de novo a trial court's decision in regard to a motion for summary disposition in a declaratory judgment action. *Unisys Corp v Comm'r of Ins*, 236 Mich App 686, 689; 601 NW2d 155 (1999). The interpretation of clear contractual language is an issue of law that is reviewed de novo on appeal. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463, 469; 663 NW2d 447 (2003).

Plaintiff's policies provided coverage for "property damage" caused by an "occurrence." An "occurrence" is defined by the policy as an accident. The trial court relied on *Radenbaugh v Farm Bureau Gen Ins*, 240 Mich App 134; 610 NW2d 272 (2000), for its finding because the damages claimed in the underlying counter claims were to plaintiff's own work product and that there was, therefore, no "occurrence" to trigger coverage. In *Radenbaugh*, this Court adopted the analysis of the federal district court in, *Calvert Ins Co v Herbert Roofing & Insulation Co*, 807 F Supp 435 (ED Mich, 1992), which examined whether there is an "occurrence" when defective workmanship is the nature of the claim. The district court found that the focus of the inquiry is on whether the insured's defective workmanship resulted in damage to the property of others or only to the insured's work product. *Calvert, supra* at 438.

All damage alleged in the underlying actions in this case was to the insured's own work product. Plaintiff's argument that the property of others would be damaged if the defective work complained of were replaced, is without merit. Further, plaintiff's assertion on appeal that the underlying counter claims contained allegations of moisture damage is simply untrue. In order to constitute damage to the property of others, plaintiff's defective work product must have caused some additional or resultant damage to property that stems from, but does not include, that defective work product. In the underlying counter claims at issue here, there is no allegation of damage that stems from but does not include plaintiff's faulty workmanship or defective work product. We agree with the trial court that based on the pleadings[1], there was no "occurrence" for purposes of coverage under the policy and hold that summary disposition was properly granted.

Plaintiff also argues that the fact that this work was performed by subcontractors has some bearing on the result here. Plaintiff has supplied no authority for its contention and "[a] party may not leave it to this Court to search for authority to sustain or reject its position." *In re Keifer*, 159 Mich App 288, 294; 406 NW2d 217 (1987). Additionally, the existence of an "occurrence" is dependent on the nature of the act, not on who performs it. Therefore, there is no "occurrence" under plaintiff's policies here and the grant of summary disposition to defendant Cincinnati Insurance was appropriate.

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[1] Plaintiff attached copies of the counter claims in the underlying cases to its complaint in this case and we consider them part of the pleadings.

Plaintiff's other issue on appeal is that defendant Shoreline breached its contract and agency relationship because it failed to investigate its claims. Plaintiff has failed to cite any authority or precedent for his claims that defendant Shoreline owed a duty to investigate its claim. Our Supreme Court has stated, "[i]t is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow." *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Additionally, "[f]ailure to brief a question on appeal is tantamount to abandoning it." *Id*. A cursory statement with little or no citation of supporting authority is insufficient to bring before this Court. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). Therefore, plaintiff has abandoned this issue on appeal.

Affirmed.

/s/ Brian K. Zahra
/s/ William B. Murphy
/s/ Janet T. Neff